

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

WANDA SUE KIRBY,)
)
Plaintiff,) CASE NO.:
v.)
) CV-06-RRA-1506-NE
WAL-MART STORES EAST, L.P., et al.,)
)
Defendants.)

MEMORANDUM OF OPINION

This case comes before the court on the motion to dismiss for lack of prosecution (doc. 7), filed by defendant Wal-Mart Stores East, L.P. (“Wal-Mart”).

The complaint in this matter was originally filed in the Circuit Court of Lawrence county, Alabama on August 1, 2006. The complaint named Wal-Mart and several fictitious parties. This case was removed to the Northern District of Alabama that same day.

On September 14, 2006, the magistrate granted the plaintiff’s counsel’s motion to withdraw in this matter, and continued the case for 30 days for the plaintiff to retain new counsel. On October 17, 2006, the court reminded the parties of their obligations pursuant to Fed. R. Civ. P. 26(f). That order specifically reminded the parties what they would need to conduct a Rule 26 meeting at a mutually agreed upon location. It also states that “[i]f the parties are unable to agree upon a time and place, the required meeting shall be held at 10:00 a.m. on the last Friday falling within 45-days of this order in the chambers of the undersigned magistrate judge in the United States Courthouse, 1729 Fifth Avenue North, Birmingham, Alabama.” *Order of October 17, 2006*, at 1.

No report of parties planning meeting has been filed. Also, no counsel has appeared on behalf of the plaintiff. Counsel for Wal-Mart has offered evidence that it advised the plaintiff of

the need to contact them about the Rule 26 meeting but that the plaintiff never responded to them. The plaintiff also apparently did not appear at the court's chambers for said meeting.

Fed. R. Civ. P. 37(b)(2)(C) provides:

If a party . . . fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others . . . [a]n order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Fed. R. Civ. P. 37(b)(2)(C). It appears from the record that the plaintiff has failed to comply with this court's Rule 26 order, and has no interest in further prosecuting this action. An appropriate order of dismissal will be entered.

DONE this 8th day of January 2007.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE